

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 06 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

WILLIAM DAL MOLIN; CHRIS  
MALAN,

Plaintiffs - Appellants,

v.

COUNTY OF NAPA CONSERVATION,  
DEVELOPMENT & PLANNING  
DEPARTMENT; ED COLBY,  
individually and in his official capacity;  
COUNTY OF NAPA DISTRICT  
ATTORNEY'S OFFICE; RICHARD  
ZIMMERMAN, individually and in his  
official capacity,

Defendants - Appellees.

No. 05-16804

D.C. No. CV-04-03879-WHA

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
William H. Alsup, District Judge, Presiding

Argued and Submitted January 16, 2008  
San Francisco, California

Before: NOONAN, W. FLETCHER, and BEA, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

William Dal Molin and Chris Malan (Appellants) appeal the dismissal of their suit under 42 U.S.C. § 1983. They allege that the district court erred when it held that Malan lacked standing and that Appellants had presented insufficient evidence to maintain a claim of malicious or selective prosecution. The district court did not err, and we affirm.

Malan contends that the prosecution of her father as retaliation for her political activity confers standing on her to sue for a violation of her First Amendment rights. Her argument is squarely foreclosed by *Biggs v. Best, Best & Krieger*, 189 F.3d 989, 992-93 (9th Cir. 1999).

Appellants argue that, because they alleged that Dal Molin's prosecution was motivated by malice and bad faith, the district court should have proceeded to trial on a claim of malicious prosecution. However, Appellants failed to allege, or introduce evidence to suggest, that Dal Molin was prosecuted in the absence of probable cause. *See Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004). The district court was therefore correct to grant summary judgment against Appellants on their malicious prosecution claim.

Appellants likewise failed to substantiate their selective prosecution claim. In order to maintain a claim of selective prosecution, a plaintiff must show that similarly situated individuals were not prosecuted unless they were members of a

targeted class. *See Wayte v. United States*, 470 U.S. 598, 608-610 (1985); *United States v. Armstrong*, 517 U.S. 456, 463 (1996). Appellants have not shown that the several individuals who were prosecuted under similar circumstances were also related to political activists. Nor have they shown that the individuals who went unprosecuted were unrelated to political activists. The district court was therefore correct to grant summary judgment against Appellants on their selective prosecution claim.

**AFFIRMED.**